



National Fleet Leasing Corp.

NFL PERSONAL AUTO LEASING • NFL EQUIPMENT LEASING
5301 FIFTH AVE. PITTSBURGH, PA. 15232 TELEPHONE (412) 682-7171

February 27, 1979

9-082A042

Secretary
Interstate Commerce Commission
12th and Constitution Avenue, N.W.
Washington, D.C. 20423

RECORDATION NO. 10219 Filed 1425

MAR 23 1979 - 12 00 PM

Date MAR 23 1979

Fee \$ 50.00

INTERSTATE COMMERCE COMMISSION

ICC Washington, D.C.

Dear Sir:

Please find enclosed an original and three counterparts of an Agreement and Lease dated December 1, 1978, between National Fleet Leasing Corporation, 5301 Fifth Avenue, Pittsburgh, Pennsylvania 15232, Lessor, and Borg-Warner Chemicals Division, Borg-Warner Corporation, P.O. Box 1868, Parkersburg, West Virginia 26101, Lessee. This Agreement and Lease covers 58 unloading hopper cars with road numbers NAHX 58011 to 58018 inclusive, NAHX 58020 to 58056 inclusive, NAHX 56500 to 56504 inclusive and NAHX 58089 to 58096 inclusive.

Also enclosed is a check in the sum of \$50 to the order of the Interstate Commerce Commission for recording said Agreement and Lease.

Please return the original and one copy stamped with the recordation notice to Robert C. Nash, Esquire, Chapman & Cutler, 111 West Monroe Street, Chicago, Illinois 60603. Thank you very much for your cooperation.

Very truly yours,

NATIONAL FLEET LEASING CORP.

By

M. H. Sivitz
President

MHS:AHH:lma

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C. T. Kowalen
C. Conley

Interstate Commerce Commission
Washington, D.C. 20423

3/23/79

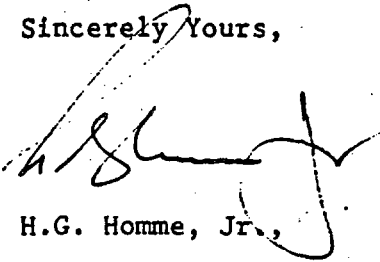
OFFICE OF THE SECRETARY

Robert C. Nash, Esq.
Chapman & Cutler
111 West Monroe Street
Chicago, Illinois 60603

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on 3/23/79 at 12:00pm, and assigned recordation number(s) 10219 & 10220

Sincerely Yours,



H.G. Homme, Jr.,
Secretary

Enclosure(s)

SE-30-T
(2/78)

10219

RECORDATION NO. Filed 1425

MAR 23 1979 -12 00 PM

INTERSTATE COMMERCE COMMISSION

AGREEMENT AND LEASE

dated as of December 1, 1978

between

NATIONAL FLEET LEASING CORPORATION,
Lessor

and

BORG-WARNER CHEMICALS DIVISION, BORG-WARNER CORPORATION,
Lessee

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- Lease Supplement
- Lease Schedule (with Annex 1)
- Exhibits -
 - A. Form of Certificate of Acceptance
 - B. Form of vendor's Bill of Sale
- Certificate of Acknowledgment

AGREEMENT AND LEASE

THIS AGREEMENT AND LEASE, dated as of December 1, 1978 between NATIONAL FLEET LEASING CORPORATION, a Pennsylvania corporation ("Lessor"), and BORG-WARNER CHEMICALS DIVISION, BORG-WARNER CORPORATION, a Delaware corporation ("Lessee");

W I T N E S S E T H T H A T :

WHEREAS, Lessee has requested that Lessor purchase and lease to Lessee the personal property described in the Lease Schedule (attached hereto), and Lessor is willing to do so upon the terms and subject to the conditions hereinafter set forth;

NOW, THEREFORE, the parties hereto, in consideration of their mutual covenants hereinafter set forth and intending to be legally bound hereby, agree as follows:

ARTICLE I. Certain Definitions

In addition to the words and terms defined elsewhere in this Agreement, the following words and terms shall have the following meanings, respectively, unless the context hereof clearly otherwise requires:

"Additional Rent" shall mean any and all amounts, liabilities and obligations which Lessee assumes or agrees to pay hereunder pursuant to Section 4.3 of this Agreement, other than Basic Rent.

"Agreement" shall mean this Agreement and Lease, as amended or supplemented from time to time, and shall include the Lease Schedule, the Lease Supplement and the Certificate of Acceptance executed and delivered pursuant to this Agreement. Each reference herein to "this Agreement", "herein", "hereunder", "hereof" or other like words shall include this Agreement, the Lease Schedule, the Lease Supplement, the Certificate of Acceptance and any annex, exhibit or schedule attached hereto or thereto.

"Basic Rent" shall mean the amount payable as Basic Rent by Lessee pursuant to Section 4.2 of this Agreement.

"Certificate of Acceptance" shall mean the certificate of Lessee substantially in the form of Exhibit A hereto executed and delivered under this Agreement.

"Default" and "Event of Default" shall mean any of the events described in Section 14.1 hereof.

"Equipment" shall mean all the Units described in the Certificate of Acceptance executed and delivered under this Agreement.

"Final Delivery Date" shall mean the date identified as such in the Lease Schedule.

"Interest Payment Rate" shall mean the lesser of 13% per annum or the maximum rate permitted by law.

"Lease Schedule" shall mean the Lease Schedule executed and delivered by Lessor and Lessee as of the date hereof, attached hereto and hereby incorporated herein.

"Lease Supplement" shall mean the Lease Supplement attached hereto and hereby incorporated herein.

"Lessee's Right to Contest" shall mean, when used herein to modify Lessee's obligation to make payments to a governmental authority or other third party (other than payments required to be made pursuant to Section 11.2 hereof) or to take any action with respect to the Equipment imposed by law or by governmental authority, that Lessee shall have the right to contest such obligation by appropriate proceedings diligently conducted in good faith by Lessee so long as (i) Lessee shall supply Lessor with all such information with respect thereto as Lessor shall reasonably request, (ii) such contest does not, in Lessor's reasonable judgment, involve any danger of sale, forfeiture or loss of any Unit or create any danger of Lessor incurring criminal liability or other liability for which indemnification, satisfactory to Lessor and its counsel, of Lessor, its successors, assigns, representatives, directors, officers, employees, agents and servants by Lessee is not provided, and (iii) no Event of Default (or other event which with notice or lapse of time or both would be an Event of Default) has occurred and is continuing.

"Lessor's Cost" shall mean the purchase price of each Unit to Lessor (which shall not exceed the amount set forth in the Lease Schedule), plus any excise, sales and use taxes paid or payable by Lessor with respect to the purchase thereof, and plus any costs and expenses approved and paid by Lessor in connection with the delivery and installation thereof.

"Rent" shall mean Additional Rent and Basic Rent collectively.

"Rental Payment Date" shall mean each date on which Basic Rent is payable hereunder.

"Stipulated Loss Value" shall mean with respect to each Unit the amount equal to the applicable percentage of Lessor's Cost determined in accordance with the table set forth on Annex 1 to the Lease Schedule.

"Term" shall mean the period of time for which any one or more of the Units is leased hereunder.

"Unit" shall mean each individual item of personal property described in the Certificate of Acceptance executed and delivered under this Agreement.

ARTICLE II. Agreement to Lease

Lessor and Lessee agree that, from time to time on or before the Final Delivery Date, Lessor shall accept title to the respective Units (provided the purchase price therefor shall not exceed individually or collectively the amount of Lessor's Cost assigned to such Units in the Lease Schedule), and simultaneously therewith Lessor shall lease the Units to Lessee and Lessee shall hire same from Lessor, all upon the terms and subject to the conditions of this Agreement.

ARTICLE III. Delivery and Acceptance

3.1. Delivery and Acceptance of Equipment. Lessor has contracted or will contract with the vendor of each Unit for delivery at the location set forth in the Lease Schedule. Lessor shall not be liable for any failure or delay in obtaining, or in delivery of, any of the Units.

Lessor hereby appoints Lessee, as the authorized representative of Lessor, to inspect and to accept delivery of each Unit from the vendor thereof. Acceptance of delivery by Lessee shall, without further act, irrevocably constitute acceptance by Lessee and Lessor of such Unit for all purposes of this Agreement.

Lessee hereby acknowledges and represents and warrants to Lessor with respect to each Unit so accepted that (i) such Unit is of a size, design, capacity and manufacture selected by Lessee, (ii) such Unit conforms to the applicable description set forth in the Lease Schedule, and (iii) Lessee is satisfied that such Unit is suitable for its purposes; provided, however, that nothing contained in this Agreement or in the Certificate of Acceptance shall in any way diminish or otherwise affect any rights which Lessor or Lessee may have against the vendor or manufacturer of any Unit or any subcontractor of such vendor or manufacturer.

3.2. Certificate of Acceptance. Lessee shall promptly complete, execute and deliver to Lessor the Certificate of Acceptance with respect to each Unit so determined acceptable, and in conjunction shall take such other action as may be necessary to fulfill the applicable conditions specified in Article VI hereof.

ARTICLE IV. Term and Rent

4.1. Term. The Term shall commence on the date of acceptance by Lessee of the first Unit accepted for lease hereunder, as evidenced by the execution and delivery

by Lessee of the Certificate of Acceptance with respect thereto. Unless earlier terminated or extended in accordance with the express provisions hereof, the Term shall expire on the date determined in accordance with the Lease Schedule.

4.2. Basic Rent. Lessee shall pay to Lessor Basic Rent for each Unit, in the aggregate amount and in the installments and on the Rental Payment Dates as specified in the Lease Schedule and in the Certificate of Acceptance covering such Unit.

4.3. Additional Rent. The lease created pursuant to this Agreement is a "net" lease. Lessee shall pay as Additional Rent all amounts (in addition to Basic Rent) required to be paid under this Agreement and (except as expressly provided herein and subject to Lessee's Right to Contest) all costs, taxes (except taxes imposed on Lessor because of its income), assessments and other expenses of every character (whether seen or unforeseen and whether or not expressly provided for herein) relating to or arising in connection with the use, occupancy, ownership, maintenance, repair or reconstruction of any Unit during the Term and, to the extent expressly provided herein, thereafter. Lessee shall also pay to Lessor as Additional Rent interest at the Interest Payment Rate on each overdue installment of Basic Rent and on each overdue payment of Additional Rent.

4.4. Payment of Rent. Each installment of Basic Rent shall be paid to Lessor at its office at 5301 Fifth Avenue, Pittsburgh, Pennsylvania 15232, or as directed by Lessor, and all Additional Rent shall be paid directly to the person entitled thereto and if such person is Lessor at its office or as it directs as aforesaid. All payments of Rent shall become due at 12:00 noon Pittsburgh time on the Rental Payment Date when due.

4.5. No Set-Off. Lessee shall not be entitled to any abatement of Rent, reduction thereof or set-off, counterclaim, recoupment or defense against Rent, including, but not limited to, abatements, reductions, set-offs, counterclaims, recoupments or defenses due or alleged to be due by reason of any past, present or future claims of Lessee against Lessor or any other person for any reason whatsoever; nor, except as otherwise expressly provided herein, shall this Lease terminate or the obligations of Lessee be otherwise affected by reason of any defect in the title, condition, design, operation or fitness for use of any Unit or damage to or loss of possession or loss of use or destruction of all or any of such Units from whatsoever cause and of whatever duration or any presently existing or hereafter created liens, encumbrances or rights of others with respect to any Unit or the prohibition of or other restriction against Lessee's use of all or any of such Units or the interference with such use by any person or entity or the invalidity or unenforceability or lack of due authorization of this Agreement or any insolvency of or the bankruptcy, reorganization or similar proceeding against Lessee, or for any combination of such cause or any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the Rent payable by Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Agreement. To the extent permitted by applicable law, Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease

of any of the Units except in accordance with the express terms hereof. Each payment of Rent made in compliance with this Agreement shall be final, and Lessee shall not seek to recover all or any part of such payment from Lessor for any reason whatsoever.

ARTICLE V. Representations and Warranties

5.1. Lessor's Representations and Warranties. Lessor represents and warrants to Lessee that Lessor has received whatever title was conveyed to it by the vendor from which title to each Unit was received and that the Equipment is free of liens and encumbrances which may result from any claims against Lessor not related to Lessor's ownership of the Equipment. Lessor further represents and warrants that it has full power and authority to lease the Equipment to Lessee in accordance with the terms hereof. THE WARRANTIES OF LESSOR SET FORTH IN THIS SECTION 5.1 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS OR WARRANTIES OF LESSOR WHETHER STATUTORY, WRITTEN, ORAL OR IMPLIED, AND LESSOR HAS NOT MADE AND DOES NOT HEREBY MAKE, NOR SHALL IT BE DEEMED BY VIRTUE OF HAVING LEASED THE EQUIPMENT PURSUANT TO THIS AGREEMENT TO HAVE MADE, ANY REPRESENTATION OR WARRANTY AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE WORKMANSHIP IN, THE EQUIPMENT, but Lessor authorizes Lessee, at Lessee's expense, to assert during the Term, so long as no Event of Default and no event which with notice or lapse of time or both would be an Event of Default shall have occurred and be continuing, all of Lessor's rights under any manufacturer's, vendor's or dealer's warranty with respect to the Equipment, and Lessor agrees to cooperate with Lessee in asserting such rights; provided, however, that Lessee shall not attempt to enforce such rights unless (i) Lessee shall furnish to Lessor such information with respect thereto as Lessor may reasonably request and (ii) the enforcement of such rights does not, in Lessor's reasonable judgment, involve any danger of sale, forfeiture or loss of any Unit or create the danger of Lessor's incurring criminal liability or other liability for which indemnification by Lessee, satisfactory to Lessor and its counsel, of Lessor and its successors, assigns, representatives, directors, officers, employees, agents and servants is not provided. Any amount received by Lessee as payment under any warranty pursuant to the above authorization shall be applied to restore the Equipment to, or place it in, as good a condition as it was or should have been (but for defects giving rise to such payment under warranty) when delivered to Lessee hereunder, ordinary wear and tear excepted, with the balance of such amount, if any, to be paid over to Lessor. The provisions of this Section 5.1 have been negotiated and agreed to by the parties hereto and, except to the extent otherwise expressly provided in this Section 5.1, are intended to be a complete negation and exclusion of any representations or warranties by Lessor, express or implied, whether arising pursuant to the Uniform Commercial Code or any similar law now or hereafter in effect, or otherwise.

5.2. Lessee's Representations and Warranties. Lessee represents and warrants that:

(a) Lessee is a corporation duly organized and existing in good standing under the laws of the state of its incorporation, and is duly qualified to do business in those jurisdictions (including each of those where the Equipment will be located) where such qualification is necessary;

(b) Lessee has full power, authority and legal right to execute, deliver and perform in accordance with this Agreement. This Agreement has been duly authorized by all necessary corporate action on the part of Lessee; does not require the approval of, or the giving of notice to, any federal, state, local or foreign governmental authority (except such as has already been given or obtained); does not contravene any law, governmental regulation or judicial or administrative order or decree binding on Lessee; and does not contravene Lessee's charter or by-laws or any indenture or agreement to which Lessee is a party or by which it or its property is bound;

(c) This Agreement constitutes a legal, valid and binding obligation of Lessee, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency or other laws affecting creditor's rights generally.

(d) Except as disclosed in a letter furnished by Lessee to Lessor at or before the time of execution of this Agreement, there are no pending or threatened actions or proceedings against Lessee or any of its affiliates before any court, administrative agency or other tribunal or body which may materially adversely affect Lessee's financial condition or operations or which question the legality or validity of this Agreement or which may affect Lessee's ability to perform its obligations hereunder;

(e) The balance sheet of Lessee as of the close of its most recent fiscal year and the earnings statement of Lessee for the fiscal year then ended have been furnished to Lessor and fairly present Lessee's financial condition as of such date and the results of its operations for such year, in accordance with generally accepted accounting principles consistently applied, and since such date there has been no material adverse change in such condition or operations;

(f) Neither the execution and delivery by Lessee of this Agreement nor any of the transactions by Lessee contemplated hereby require any notice, consent or approval except for filing, registering or recording this Agreement pursuant to Section 20c of the Interstate Commerce Act.

ARTICLE VI. Conditions to Lessor's Obligations

Lessor's duties and obligations under this Agreement shall be and remain subject to the fulfillment of the following conditions precedent, in each case in form and substance and in a manner satisfactory to Lessor and its counsel:

(a) Prior to acceptance by Lessee of each of the respective Units, there shall have been furnished to Lessor (i) a true and correct copy of all purchase orders, invoices and other contract documents relating to such Unit between the

vendor thereof and Lessee, and (ii) tender of an executed bill of sale for such Unit in substantially the form of Exhibit B attached hereto, together with a certificate of incumbency satisfactory to Lessor showing that the person or persons signing each such bill of sale on behalf of the vendor is or are duly authorized to do so;

(b) Simultaneously with the acceptance by Lessee of the respective Units, Lessee shall have furnished to Lessor the Certificate of Acceptance with respect to such Unit duly completed and executed by Lessee;

(c) Prior to or simultaneously with delivery of the Certificate of Acceptance, Lessee shall have furnished to Lessor a copy of the resolutions of the Board of Directors (and if applicable the shareholders) of Lessee, certified by the Secretary or an Assistant Secretary of Lessee, duly authorizing the lease of the Equipment hereunder and the execution, delivery and performance of this Agreement, together with an incumbency certificate as to the person or persons authorized to execute and deliver this Agreement (and the other documents contemplated hereby) on behalf of Lessee;

(d) Prior to or simultaneously with delivery of the Certificate of Acceptance, Lessee shall have furnished to Lessor an opinion of counsel for Lessee as to each of the matters set forth in Section 5.2 (other than paragraph (e) thereof), and as to such other matters as Lessor may reasonably request, and Lessee shall have furnished additional copies of said opinion addressed to Lessor's lender;

(e) Prior to or simultaneously with delivery of the Certificate of Acceptance, Lessee shall have furnished to Lessor evidence satisfactory to Lessor as to the due compliance by Lessee with the provisions of Article X hereof;

(f) [INTENTIONALLY LEFT BLANK]

(g) This Agreement shall have been duly filed, recorded and deposited in conformity with Section 20c of the Interstate Commerce Act; and

(h) All other legal proceedings and details relative to this Agreement shall be reasonably satisfactory to Lessor and its counsel, and Lessor shall have been furnished with original or certified copies of such other documents as it or its counsel may reasonably request.

ARTICLE VII. Reports

7.1. Financial Reports. Lessee shall, as soon after the end of each fiscal year of Lessee as practicable (and in any event within 90 days thereafter), furnish to Lessor duplicate copies of Lessee's most recent financial reports, including Lessee's most recent annual report and balance sheet and profit and loss statement, certified either

by a recognized firm of certified public accountants or, if Lessee's financial statements are not audited, by the chief financial or accounting officer of Lessee. Interim statements, certified by the chief financial or accounting officer of Lessee, shall be furnished within fifteen days after their preparation by Lessee.

7.2. Annual Certificate. Lessee shall furnish to Lessor, concurrently with the delivery of the annual financial statements of Lessee required by Section 7.1 hereof, a certificate signed on behalf of Lessee by the chief financial or accounting officer of Lessee stating as of a recent date (but not more than three months prior thereto):

(a) The manufacturer's serial number of any Unit that has become destroyed, irreparably damaged or otherwise permanently rendered unfit or unavailable for use since the date of the previous report delivered pursuant to this Section 7.2 (or since the commencement of the Term in the case of the first such report);

(b) That the signer of the certificate has made, or caused to be made by persons under his authority and direction, a reasonable investigation concerning the Equipment and Lessee's compliance with its obligations hereunder, and that no Default has occurred and is continuing or, if such Default has occurred and is continuing, the nature thereof and the steps which Lessee has taken or is taking to cure the same.

7.3. Additional Reports. Upon the written request of Lessor at any time and from time to time, Lessee will also deliver to Lessor, within fifteen (15) days of such request, a certificate executed on behalf of Lessee by a duly authorized officer containing the information, as of a date not earlier than the date of such request, called for by Section 7.2(b). Lessee shall also furnish to the Lessor such additional information concerning the location, condition, use and operation of the Equipment and the financial condition and operations of Lessee as Lessor may reasonably request from time to time, and Lessee shall permit any person designated by Lessor to visit and inspect the Equipment and the records maintained in connection therewith and to discuss the affairs, finances and accounts of Lessee with the principal officers of Lessee, all at such reasonable times and as often as Lessor may reasonably request.

7.4. Accidents. In the event of an accident arising out of alleged or apparent defective design or manufacture or out of the use or operation of any Unit, Lessee shall promptly file with the appropriate governmental agencies all notices required by law and shall promptly deliver to its insurance carriers all notices called for under each policy of insurance relating to such Unit. Concurrently with such filing or delivery, Lessee shall deliver to Lessor a copy of the notice so filed or delivered. Lessee shall also deliver to Lessor any additional information with respect to such accident which Lessor shall reasonably request and shall promptly make available to Lessor all correspondence, papers, notices and documents whatsoever received by Lessee in connection with any claim or demand involving or relating to any such accident.

7.5. Tax Liens. Lessee shall notify Lessor in writing, within ten days after any day on which any tax lien shall attach to any Unit, of such lien and of the location of such Unit on such day.

ARTICLE VIII. Maintenance, Use and Operation

8.1. Maintenance and Operation. Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit in good order and repair, ordinary wear and tear excepted. The Lessee agrees to comply with all governmental laws, regulations, requirements and rules (including when applicable the rules of the Interstate Commerce Commission, the Department of Transportation and the current Interchange Rules, or supplements thereto, of the Association of American Railroads) with respect to the use, maintenance and operation of each Unit. In case any equipment or appliance on any Unit shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on any Unit in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such changes, additions and replacements at its own expense.

If at any time during the Term it shall be determined by the Interstate Commerce Commission, the Department of Transportation or by the Association of American Railroads that any Units do not conform to their respective standards, specifications and requirements, Lessor may, at its option, upon 30 days' notice to Lessee, declare terminated the lease of such nonconforming Unit if Lessee does not agree in writing within said 30-day period to correct such non-conformity at its sole cost and expense. If the Lessee so agrees, it shall effect such correction within such period as may be permitted by the Interstate Commerce Commission, the Department of Transportation or the Association of American Railroads, but in any event prior to the expiration of the term of this Agreement. Upon a declaration of termination under this Section, Lessee shall pay to Lessor on the next succeeding Rental Payment Date the Stipulated Loss Value of such Units as of the date of such payment, in accordance with the Lease Schedule. Upon payment of such Stipulated Loss Value, payment of all Rent accrued and unpaid on each such Unit to the date of payment, and the satisfaction of all obligations of the Lessor under the Security Agreement-Trust Deed dated February .., 1979, (i) Rent on each such Unit shall cease to accrue, (ii) title to each such Unit shall automatically pass to the Lessee WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, ON THE PART OF LESSOR, and (iii) the term of lease of each such Unit shall end.

Any readily removeable freight car parts installed or replacements made by the Lessee or any sublessee upon any Unit which are not required in order to maintain the Unit in good working condition (reasonable wear and tear excepted) or in order to conform with the requirements of the Interstate Commerce Commission, the Department of Transportation, the Association of American Railroads or other governmental body shall be the property of the Lessee and title thereto shall be immediately vested in the Lessee. All other freight car parts installed or replacements made by the Lessee or any sublessee upon any Unit shall be considered accessories to such Unit and title thereto shall be immediately vested in the Lessor, without cost or expense to the Lessor.

8.2. Location and Insignia. Lessee will cause the Units to be kept numbered with the identifying numbers as assigned by the American Association of Railroads and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each such Unit, in letters not less than one inch in height, the words "Property of and leased from National Fleet Leasing Corporation and subject to a Security Interest recorded with the I.C.C." or other appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such Unit and its rights under this Agreement. After assignment of such identifying numbers, the Lessee will not permit any Unit to be placed in operation or exercise any control or dominion over the same until such name and words shall have been so marked on both sides thereof and will replace promptly any such name and words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except with the consent of the Lessor and in accordance with a statement of new identifying numbers to be substituted therefor, which consent and statement previously shall have been filed with the Lessor by the Lessee; provided, however, that, in addition to such identifying number, the Lessee may cause to be placed on each Unit in such position as not to be confused with the identifying number thereon a reporting number identifying such Unit for reporting and operating purposes, which reporting number may be changed by the Lessee from time to time without the consent of the Lessor or the filing, recording, registering and depositing of any instrument.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership. Subject to the foregoing, the Lessee may cause the Units to be lettered with the names or initials or other insignia used by the Lessee or any sublessee or their respective affiliates on railroad equipment used by it of the same or similar type for convenience of identification of the right of the Lessee or any sublessee to use the Unit under this Agreement.

8.3. Supplies. Lessee shall pay for and provide all power, fuel and supplies consumed by and required for each Unit and all repairs, parts and supplies necessary therefor.

8.4. Accessories. Lessee shall not, without the prior written consent of Lessor, affix or install any accessory, equipment or device on any Unit if such addition will impair the value or the originally intended function or use of such Unit.

8.5. Personal Property. Lessee shall not, without the prior written consent of Lessor and subject to such conditions as Lessor may impose for its protection, affix or install any Unit to or in any real property, it being the mutual intention of the parties that the Equipment at all times shall be and remain personal property of Lessor. Lessee shall take such steps as may be necessary to prevent any person from acquiring any rights in any Unit by reason of such Unit being claimed or deemed to be real property.

8.6. Sublease and Assignment. Lessee shall not, without the prior written consent of Lessor (it being understood that written consent in one instance shall apply only in the given instance and shall not constitute a waiver of any of the terms of this Agreement), assign this Agreement or sublease or let any Unit or permit any Unit to be operated by anyone other than Lessee or Lessee's subsidiaries and affiliates; provided, however, that the Lessee may sublease any unit if the sublease for such unit does not exceed twelve months and if the sublessee is named on a list which Lessee has heretofore furnished to Lessor and which Lessor has approved; and provided further, however, that the Lessee may assign this Agreement to any successor of the Lessee by merger, consolidation, or purchase of all its assets. If Lessee assigns this Agreement or subleases any Unit, it shall remain primarily liable for all obligations of Lessee hereunder, whether or not Lessor accepts or acquiesces in substituted performance of those obligations by an assignee or sublessee.

Lessee may receive and retain for its own account such compensation for assignment or subletting the Equipment and/or for use of the Equipment by others as Lessee may determine. Without limiting the foregoing, it is contemplated that Lessee shall receive, insofar as applicable laws and regulations allow, all mileage allowance, rents and other compensation (hereinafter referred to as "Mileage") payable by carriers by reason of the use of the Equipment and if for any reason Lessor shall receive any Mileage then (unless an Event of Default shall have occurred and be continuing, in which event such Mileage or portion thereof shall be retained by Lessor until such Event of Default shall no longer be continuing) Lessor shall remit such Mileage to Lessee promptly after Lessee shall furnish to Lessor, at Lessee's sole expense, either (a) a ruling of the Interstate Commerce Commission to the effect that the remittance thereof to Lessee shall not constitute a rebate within the meaning of 49 U.S.C. Section 41, as amended, or (b) an opinion of counsel to the same effect.

8.7. Permitted Use. Lessee shall not use, operate, maintain or store any Unit improperly, carelessly or in violation of this Agreement, or of any applicable regulatory laws and bodies whatsoever, or of any instructions therefor furnished by Lessor or the manufacturer thereof, or at any location outside the continental United States or Canada; nor use or operate any Unit other than in a manner and for the use contemplated by the manufacturer thereof.

ARTICLE IX. Liens

Lessee will not permit any Unit to be subject to any lien, charge or encumbrance whatsoever except (i) the respective rights of Lessor and Lessee as herein provided, (ii) liens asserted by any person claiming by, through or under Lessor and resulting from acts or omissions of Lessor, except to the extent that such liens, charges or encumbrances arise from the failure of Lessee to perform any of Lessee's obligations hereunder, (iii) liens for taxes either not yet due or which are subject to Lessee's Right to Contest, (iv) inchoate materialmen's, mechanics', workmen's, repairmen's, employees' or other like liens arising in the ordinary course of business and not delinquent and (v) liens arising out of judgments or awards against Lessee which are subject to Lessee's Right to Contest.

ARTICLE X. Insurance

10.1. Physical Damage Insurance. At its own expense, Lessee shall maintain physical damage insurance on each Unit against fire, collision and such other perils

and casualties and in such amounts as are usually carried by corporations engaged in the same or a similar business and similarly situated to Lessee; provided, however, that in no event shall the amount of such insurance, plus such deductible, if any, as shall be set forth in the Lease Schedule, at any time be less than the aggregate Stipulated Loss Value of all Units then leased hereunder.

10.2. Liability Insurance. At its own expense, Lessee shall maintain insurance protecting the interests of both Lessor and Lessee against liability for property damage to third persons and personal injury or death arising out of the maintenance, use, operation and ownership of the Equipment, in such amounts as are usually carried by corporations engaged in the same or similar businesses and similarly situated to Lessee; provided, however, that in no event shall the amount of such insurance per person and per occurrence (subject to such deductible, if any, as shall be set forth in the Lease Schedule) be less than the amount set forth in the Lease Schedule.

10.3. General Insurance Provisions. All insurance required by Sections 10.1 and 10.2 of this Agreement shall name the Lessor and any assignee thereof and Lessee as insured parties, shall be maintained with responsible insurance companies meeting such reasonable standards as may from time to time be established by Lessor and shall provide that the coverage thereunder may be altered or cancelled only after not less than 30 days' prior written notice to Lessor. Upon receipt by Lessee of notice of assignment of this Lease and the rent payable hereunder to any assignee of Lessor, Lessee shall cause the insurance on the Equipment to provide that losses, if any, shall be payable to such assignee under a lender's loss payable clause satisfactory to such assignee.

10.4. Payment of Premium by Lessor. In the event that Lessee shall fail to obtain or maintain insurance in accordance with the provisions of this Agreement, Lessor shall have the right to obtain, and pay the premiums on, such insurance as Lessor deems necessary and Lessee shall, upon demand, reimburse Lessor in an amount equal to the amount of such premiums paid plus interest at the Interest Payment Rate from the date of such payment to the date of such reimbursement.

ARTICLE XI. Assumption of Risk; Indemnification

11.1. General. Lessee does hereby assume liability for, and does hereby agree to indemnify, protect, save and keep harmless Lessor and its successors, assigns, representatives, directors, officers, employees, agents and servants from and against, and, subject to Lessee's Right to Contest, does hereby agree to pay, when due, as Additional Rent, all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements, including legal fees and expenses, of whatsoever kind or nature, whether seen or unforeseen, imposed upon, incurred by or with respect to or asserted against any Unit, the Lessor or its successors, assigns, representatives, directors, officers, employees, agents or servants, in any way relating to or arising out of the manufacture, purchase, acceptance or rejection, ownership, delivery, lease, use, possession, operation, condition, repair, reconstruction, return or other disposition of any Unit, including without limitation those in any way relating to or arising out of or alleged to arise out of (i) any latent or other defects whether or not discoverable by Lessor or Lessee, (ii) any claim for patent, trademark or copyright infringement, (iii) any claim based on strict liability in tort and (iv) any and all license fees, assessments and sales, use, rent, property and other taxes now or hereafter imposed by any federal, state or

local government upon any Unit or its use or payments hereunder, or upon this Agreement (excluding, however, taxes, fees and other charges based upon or measured by Lessor's net income, together with interest and penalties with respect thereto), whether the same shall be payable by or billed or assessed to Lessor or Lessee, together with any penalties or interest in connection therewith; provided, however, that nothing in this Section 11.1 shall be construed so as to require Lessee to indemnify Lessor for its own gross negligence or willful misconduct. Lessee shall be obligated under this Section 11.1 irrespective of whether Lessor or any of its successors, assigns, representatives, directors, officers, employees, agents or servants shall also be indemnified with respect to the same matter under any other agreement by any other person. In the event Lessee is required to make any payment under this Section 11.1, Lessee shall pay to Lessor an amount which after deduction of all taxes required to be paid by Lessor or any other person indemnified hereunder in respect of the receipt of such payment (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of such other taxes) shall be equal to the amount of such payment. Lessee and Lessor each agree to give the other promptly upon obtaining knowledge thereof written notice of any claim or liability hereunder indemnified against; provided, however, that the failure to give such notice shall not in any way affect, impair or diminish Lessee's obligations hereunder.

11.2. Federal Income Tax Matters.

(a) As between Lessor and Lessee, Lessor, as the owner of each Unit, shall be entitled to such deductions, credits and other benefits as are provided by the Code to an owner of property, including, without limitation, an allowance for depreciation as provided by Section 167 of the Code.

(b) Lessee acknowledges that the anticipated availability to Lessor of an annual allowance for depreciation is fundamental to the economics of this Agreement. Accordingly, the basis upon which the allowance for depreciation will be determined is set forth on the Lease Schedule.

(c) As used in this Agreement: (i) the term "Depreciation Deductions" shall mean an allowance for depreciation calculated under the criteria set forth in the Lease Schedule; and (ii) the term "Code" shall mean the Internal Revenue Code of 1954, as amended to the date hereof and as in effect on the date hereof.

(d) If there shall be a disallowance, elimination, recomputation, reduction, recapture or disqualification (hereinafter called "Loss"), in whole or in part, of Depreciation Deductions for any Unit, Lessee shall pay to Lessor as Additional Rent, after written request of Lessor, an amount which, after deduction of federal, state and local income taxes, and interest and penalties required to be paid by Lessor with respect to the receipt of such Additional Rent, will (in the reasonable opinion of Lessor) cause Lessor's net yield in respect of such Unit to equal the net yield that Lessor had expected to receive if Lessor had not suffered a Loss with respect to the Depreciation Deductions. Lessor shall provide to Lessee the calculations by which the Additional Rent was determined. Such Additional Rent shall be payable over the then remaining Term commencing with the first Rental Payment Date occurring more than ten days after Lessor notifies Lessee of the required Additional Rent.

(e) Notwithstanding the provisions of paragraph (d) of this Section 11.2, Lessee shall not be required to make any payment on account of any Loss of the Depreciation Deductions due solely to (i) the failure to properly claim the Depreciation Deductions in the tax returns filed by Lessor, (ii) the sale or disposition of the Equipment, any Unit or this Agreement by Lessor prior to any Default by Lessee or (iii) the payment by Lessee to Lessor of the Stipulated Loss Value of any Unit.

(f) In the event the Internal Revenue Service proposes adjustments to the Depreciation Deductions which, if successful, could result in a Loss for which Lessee would be required to indemnify Lessor pursuant to this Section 11.2, Lessor hereby agrees to notify Lessee promptly of such proposed adjustment, to withhold payment of the tax claimed to be due for a period of 30 days after giving such notice, and, unless notified by Lessee not to contest such proposed adjustment, to exercise in good faith its best efforts (determined by Lessor in Lessor's sole discretion to be reasonable, proper and consistent with the overall tax interests of Lessor and not requiring administrative or judicial proceedings beyond the level of an Internal Revenue Service examining agent) to avoid requiring Lessee to pay such indemnity, provided that Lessee shall have agreed to indemnify Lessor in a manner satisfactory to Lessor for any liability or loss which Lessor may incur as a result of contesting such adjustments and shall have agreed to pay Lessor on demand all costs and expenses which Lessor may incur in connection with contesting such adjustments including without limitation reasonable attorneys', accountants', engineers' and like professional fees and disbursements.

(g) In the event that Lessor shall elect to contest the adjustment by paying the tax claimed and then seeking a refund thereof, Lessee may at its option (i) pay to Lessor an amount equal to the tax or (ii) allow Lessor to pay the tax itself. If Lessee elects to allow Lessor to pay the tax itself, Lessee shall pay to Lessor an amount equal to the Interest Payment Rate on the amount of such tax computed from the date of payment of such tax to the date of final determination of such adjustment, such interest to be payable in equal installments within each calendar year on each Rental Payment Date. Upon receipt by Lessor of a refund of any federal income tax paid by it in respect of which Lessee has paid interest as set forth above while such tax payment was contested by Lessor, any interest on such refund paid to Lessor by the United States Government shall be paid to Lessee forthwith upon receipt by Lessor. If Lessee advances to Lessor the tax due, Lessor shall pay to Lessee upon receipt any refund of such tax and any interest received from the United States Government with respect thereto.

11.3. Survival of Obligations. This Article XI shall become and be effective and in full force and effect from the date of this Agreement (even though no Equipment may have been accepted by Lessee and even though the Term may not have commenced) and shall remain in effect notwithstanding the expiration or other termination of the Term insofar as it relates to an event or state of facts which occurred or existed or which is alleged to have occurred or existed prior to such expiration or termination.

ARTICLE XII. Damage to Property

12.1. Stipulated Loss Value. In the event any Unit shall be lost, stolen, destroyed, damaged beyond repair or permanently be rendered unfit for any reason whatsoever, or title thereto shall be requisitioned or taken by any governmental authority

under the power of eminent domain or otherwise and such requisition or taking shall continue for a period of twelve months (herein referred to as an "Event of Loss"), Lessee shall furnish written notice to Lessor not later than ten days after the Event of Loss, setting forth pertinent details with respect to the occurrence, and Lessee shall be required to pay to Lessor on the Rental Payment Date next following such notice an amount equal to the Stipulated Loss Value for such Unit as of such Rental Payment Date. Upon payment of the Stipulated Loss Value for such Unit and of all other amounts of Rent due and payable on and prior to such Rental Payment Date, (i) the obligation of Lessee to pay all Basic Rent for such Unit on any Rental Payment Date after such Stipulated Loss Value payment shall have been made shall cease and such Unit shall cease to be part of the Equipment leased hereunder effective as of such payment, (ii) upon request of Lessee, Lessor will execute and deliver an appropriate document cancelling or amending the Certificate of Acceptance pursuant to which such Unit was leased under this Agreement, but Lessor's failure so to do shall not affect Lessee's obligations under this Agreement, and (iii) Lessor will transfer to Lessee, without recourse or warranty, all of Lessor's right, title and interest, if any, in and to such Unit.

12.2. Insurance and Condemnation Proceeds. Any insurance or other payments received by Lessor or Lessee (except under any insurance policy maintained pursuant to Section 10.2 hereof) as a result of any Event of Loss of a Unit shall be paid to or retained by Lessor and applied against Lessee's obligation to pay the Stipulated Loss Value of such Unit. The portion, if any, of any such payment in excess of the amount necessary to cover such Stipulated Loss Value shall be retained by or paid to Lessee.

ARTICLE XIII. Return of Property

At the expiration or sooner termination of the Term, Lessee shall return the respective Units to Lessor in the same operating order, repair, condition and appearance as when originally received by Lessee, excepting only for reasonable wear and tear and damage by any cause covered by collectible insurance Lessee shall pay or reimburse Lessor for the cost of all repairs necessary to restore such Unit to such condition. For a period not to exceed thirty days following the expiration or sooner termination of the Term, Lessee shall hold in storage each Unit upon any tracks chosen by the Lessee. The movement and storage of such Units is to be at the expense and risk of the Lessee. At or before the end of said thirty-day period, Lessor shall give Lessee notice of the destination to which Lessor desires the Units to be delivered (the "Destination"). Within thirty days of receipt of this notice, Lessee shall deliver the Units to the Destination. Lessee shall bear the entire expense of delivering each Unit to the Destination for a distance of 500 miles for each Unit, and Lessor and Lessee shall share equally the expense, if any, of delivering each Unit to the Destination for any distance greater than 500 miles.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Article, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whosoever shall be at the time in possession of such Unit.

ARTICLE XIV. Defaults; Remedies

14.1. Defaults; Remedies. If during the Term of this Agreement one or more of the followings events ("Events of Default") shall occur:

(a) Default shall be made in the payment when due of any Rent herein provided; or

(b) Lessee shall attempt to remove, sell, transfer, encumber or sublet (except as expressly permitted under this Agreement) any Unit; or

(c) Default shall be made in the observance or performance of any other covenants, conditions and agreements on the part of Lessee contained herein and such Default shall continue for ten days after written notice from the Lessor to the Lessee specifying the Default and demanding the same to be remedied; or

(d) A decree or order by a court having jurisdiction in the premises shall have been entered (i) adjudging the Lessee a bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of the Lessee under the Bankruptcy Act or any other state or federal law relating to bankruptcy or insolvency, (iii) for the appointment of a receiver or liquidator or trustee in bankruptcy or insolvency of the Lessee or of its property, or (iv) for the winding up or liquidation of the affairs of the Lessee; or

(e) The Lessee shall (i) institute proceedings to be adjudged a voluntary bankrupt, or (ii) consent to the filing of a bankruptcy proceeding against it, or (iii) file a petition or answer or consent seeking reorganization or readjustment under the Bankruptcy Act or any other state or federal law, or otherwise invoke any law for the aid of debtors, or consent to the filing of any such petition, or (iv) consent to the appointment of a receiver or liquidator or trustee in bankruptcy or insolvency of it or of its property or any substantial portion of its property, or (v) make an assignment for the benefit of the creditors, or shall admit in writing its inability to pay its debts generally as they become due, or (vi) take any corporate action looking to its dissolution or liquidation or in furtherance of any of the aforesaid purposes; or

(f) An event of default under any mortgage, indenture or other agreement or lease evidencing indebtedness of the Lessee shall have occurred which shall result in the declaring due and payable of indebtedness of Lessee prior to the date on which it would otherwise have become due and payable, and such declaration shall not have been satisfied, rescinded or annulled within ten days; or

(g) Lessee shall have knowledge of the existence of circumstances which it reasonably believes to constitute a Default under this Agreement, and shall fail promptly to notify Lessor of such facts; or

(h) Any representation or warranty made by Lessee in this Agreement, any Certificate of Acceptance or any instrument, certificate or other document delivered pursuant thereto or hereto shall prove to be false and misleading in any material respect;

then, in any such case, the Lessor at its option may:

A. Proceed by appropriate court action or actions either at law or in equity to enforce performance by Lessee of the applicable duties and obligations of Lessee under this Agreement or to recover from Lessee any and all damages or expenses, including reasonable attorneys' fees, which Lessor shall have sustained by reason of Lessee's Default or on account of Lessor's enforcement of its remedies hereunder; or

B. By notice in writing to Lessee, terminate this Agreement, whereupon all right of Lessee to the use of the Equipment shall absolutely cease and terminate as though this Agreement had never been made, but Lessee at its own expense shall take whatever action necessary to order the Equipment into its possession and shall deliver possession of the Equipment to Lessor in accordance with Article XIII hereof and in addition shall permit Lessor by its agents to enter upon the premises of Lessee and take possession of any such Units located thereon and Lessee shall remain liable as hereinafter provided; and thenceforth Lessor shall hold, possess and enjoy the same free from any right of Lessee, or its successors or assigns, to use the Units for any purpose whatever.

Upon such termination, Lessor shall have the right to recover forthwith from Lessee as damages for loss of the bargain and not as a penalty and as reasonable rent for the use of the Equipment and for the depreciation thereof, the sum of the following:

(1) an amount with respect to each Unit which represents the excess of the Stipulated Loss Value of such Unit over one of the following, as Lessor may in its sole discretion elect: (x) in the event Lessor shall sell such Unit, the net proceeds of such sale, (y) in the event Lessor shall re-lease such Unit, the net rents payable under the terms of such re-leasing for a period equal to the remaining term of this Agreement, discounted to the time of computation at the Interest Payment Rate, or (z) the fair market value of such Unit at the time of such termination;

(2) all due and unpaid Rent for the Equipment to the date of termination;

(3) an amount equal to accrued taxes and other amounts payable hereunder by Lessee with respect to the Equipment;

(4) all costs, expenses (including reasonable attorneys' fees), losses and damages incurred or sustained by Lessor by reason of such Default; and

(5) interest at the Interest Payment Rate on each of the foregoing from the date upon which such amounts were first payable which date, in the case of the amounts payable pursuant to clause (1) above, shall be the date upon which

the Event of Default which results in the termination of this Agreement first occurs or the date Lessor disposes of the Equipment, whichever is later.

If on the date of such termination or repossession, any Unit be damaged, lost, stolen or destroyed, or be subject to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency, Lessee shall remain liable for the Stipulated Loss Value pertaining to such Unit less the amount of any insurance recovery received by Lessor in connection therewith.

14.2. Remedies Cumulative; Waiver of Requirements. The remedies in this Agreement provided in favor of Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in its favor existing at law or in equity. TO THE EXTENT THAT SUCH WAIVER IS PERMITTED BY LAW, LESSEE HEREBY WAIVES ANY MANDATORY REQUIREMENTS OF LAW, NOW OR HEREAFTER IN EFFECT, WHICH MIGHT LIMIT OR MODIFY ANY OF THE REMEDIES HEREIN PROVIDED, INCLUDING WITHOUT LIMITATION ANY RIGHT WHICH LESSEE MAY HAVE TO NOTICE AND HEARING PRIOR TO THE REPOSSESSION AND SALE OR LEASING OF ANY UNIT.

ARTICLE XV. Assignment by Lessor

Lessee acknowledges and understands that the terms and conditions of this Agreement have been agreed to by Lessor in anticipation of its being able to assign its interest under this Agreement and in and to the Equipment leased hereunder to a bank or other lending institution or to others having an interest in the Equipment or this transaction, all or some of which will rely upon and be entitled to the benefit of the provisions of this Article XV. Lessee agrees with Lessor and with such bank or other lending institution or such other party (for whose benefit this covenant is expressly made) and in consideration of the provisions hereof, as follows: (i) to recognize any such assignment, (ii) to accept the directions or demands of such assignee in place of those of Lessor, (iii) to surrender the Equipment only to such assignee, (iv) to pay all Rent payable hereunder and to do any and all things required of Lessee hereunder and not to terminate this Agreement, notwithstanding any Default by Lessor or the existence of any offset as between Lessor and Lessee or the existence of any other liability or obligation of any kind or character on the part of Lessor to Lessee whether or not arising hereunder, and (v) not to require any assignee of this Agreement to perform any duty, covenant or condition required to be performed by Lessor under the terms of this Agreement, all rights of Lessee in any such connection being hereby waived as to any and all of such assignees; provided, however, that nothing contained in this Article XV shall relieve Lessor from its obligations to Lessee hereunder.

ARTICLE XVI. Quiet Possession

So long as no Event of Default hereunder shall have occurred and be continuing, Lessor shall not do (nor suffer to be done by any person claiming by, through or under Lessor with respect to matters not related to the ownership of the Equipment or the transactions contemplated by this Agreement) any act which will interfere with the right of Lessee peaceably and quietly to hold, possess and use the Equipment during the Term and in accordance with the provisions of this Agreement.

ARTICLE XVII. Further Assurances

Lessee and Lessor will promptly and duly execute and deliver to the other party hereto such further documents and assurances and take such further action as Lessor or any assignee thereof or Lessee may from time to time reasonably request in order to carry out more effectively the intent and purpose of this Agreement and to establish and protect the rights and remedies created or intended to be created in favor of Lessor or any assignee thereof or Lessee hereunder, including, without limitation, if requested by Lessor or such assignee or Lessee, in either case at the expense of Lessee, the execution and delivery of supplements or amendments hereto, in recordable form subjecting to this Agreement any replacement property and the recording or filing of counterparts hereof and thereof, or of financing statements with respect thereto in accordance with the laws of such jurisdiction as Lessor or such assignee or Lessee may from time to time deem advisable.

ARTICLE XVIII. Miscellaneous

18.1. Miscellaneous. Nothing herein contained shall give or convey to Lessee any right, title or interest in and to any Unit leased hereunder except as a lessee. The obligations of Lessor hereunder shall be suspended to the extent that it is hindered or prevented from complying therewith because of labor disturbances (including strikes and lockouts), war, Acts of God, fires, storms, accidents, governmental regulations or interference or any cause whatever beyond its control. No obligation of Lessor hereunder shall survive the Term, and should Lessor permit the use of any Unit beyond such Term, the obligations of Lessee hereunder shall continue and such permissive use shall not be construed as a renewal of the Term hereof nor as a waiver of any right or continuation of any obligation of Lessor hereunder, and Lessor may take possession of any such Unit at any time after the Term upon demand after five days' notice. Any cancellation or termination by Lessor pursuant to the provisions of this Agreement shall not release Lessee from any then outstanding obligations to Lessor hereunder. This Agreement constitutes the entire agreement between the parties and there are no warranties (in respect of the Equipment or otherwise), express or implied, or collateral or contemporaneous agreements that affect its import other than such as are contained herein. This Agreement may be modified, amended or mutually rescinded only by a written instrument executed by each of the parties hereto. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and, subject to Section 8.6 hereof, their respective successors and assigns. Time is of the essence of this Agreement. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Pennsylvania. Any document required to be delivered hereunder in executed form or otherwise may be delivered by telecopier. If Lessee shall fail to comply with any of its covenants herein contained, Lessor may, but shall not be obligated to, make advances to perform the same and to take all such action as in Lessor's opinion may be necessary to obtain such performance. All payments so made by Lessor and all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred in connection therewith shall be payable by Lessee to Lessor upon demand as additional rent hereunder, with interest at the Interest Payment Rate.

18.2. Renegotiation Act. Lessee represents and warrants that each Unit will not be used in connection with the performance of any prime government contract, or subcontract or purchase order thereunder, with respect to which the provisions of the Renegotiation Act of 1951, as amended (the "Act"), are applicable, unless the Lessee shall give notice of such use to the Lessor within thirty (30) days after the commencement of such use or at the date of the commencement of this Lease, whichever shall first occur. If the Unit is used in connection with the performance of any prime government contract or subcontract or purchase order thereunder, with respect to which the provisions of the Act are applicable, Lessee hereby agrees to furnish to Lessor, on or before March 1 of each year, all information required to ascertain and determine the extent to which the Unit was used, and the percentage of the total use of the Unit, as between renegotiable and non-renegotiable contracts, during the preceding calendar year. To the extent that the Unit is used in connection with the performance of any prime government contract, or subcontract or purchase order thereunder, with respect to which the provisions of the Act are applicable, then, if the profits derived by Lessor from the portion of the Rent payable hereunder allocable to the use of the Unit on renegotiable contracts shall be determined to be excessive, pursuant to the provisions of the Act, the Rent payable hereunder allocable to the use of the Unit on non-renegotiable contracts shall be increased by an amount equal to the amount of any excessive profits required to be withheld from Lessor or required to be repaid by Lessor based on the portion of the Rent allocable to the use of the Unit on renegotiable contracts. The Rent payable hereunder shall be allocable to renegotiable and non-renegotiable contracts based on the respective percentages of use of the Unit on renegotiable and non-renegotiable contracts.

ARTICLE XIX. Notices

Any notices required or permitted under this Agreement, or by law in respect of this Agreement, shall be in writing and shall be deemed to have been duly given when personally delivered or when deposited in the mail, first class, postage prepaid, or when sent by telex or prepaid telegraph, addressed to the party required to receive the same at the address set forth below such party's signature hereto, or to such other address as such party shall specify by like notice.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the date first above written.

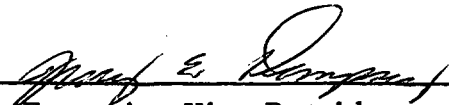
NATIONAL FLEET LEASING CORPORATION
Lessor

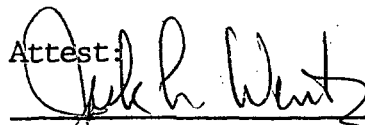
By W. A. Smith
Title Pres.

Address: 5301 Fifth Avenue
Pittsburgh, Pennsylvania 15232

Handwritten signature

BORG-WARNER CHEMICALS DIVISION,
BORG-WARNER CORPORATION
Lessee

By 
Title Executive Vice President

Attest: 
Assistant Secretary
[CORPORATE SEAL]

Address: P.O. Box 1868
Parkersburg, West Virginia 26101

CERTIFICATE OF ACCEPTANCE

No. -1- dated the 1st day of December, 1978,
to Agreement and Lease (the "Agreement")
dated as of December 1, 1978 between NATIONAL
FLEET LEASING CORPORATION and BORG-
WARNER CHEMICALS DIVISION, BORG-WARNER
CORPORATION

THIS CERTIFICATE OF ACCEPTANCE is executed pursuant to the Agree-
ment and the terms herein shall have the meanings ascribed to them in the Agreement.

Lessor and Lessee do hereby confirm and agree that (i) the Units described
in Attachment 1 hereto, having an aggregate Lessor's Cost as set forth below, have been
delivered as of the date hereof at the location or locations indicated on said Attachment
1, (ii) such Units have been duly accepted by Lessee as part of the Equipment for leasing
under the Agreement, (iii) such Units are hereby made subject to, and the rights and
duties of the parties with respect thereto shall be governed by, the Agreement, and (iv)
Lessee has become obligated to pay Basic Rent in the amounts set forth below:

Lessor's Cost: \$1,555,096.00

Rent:

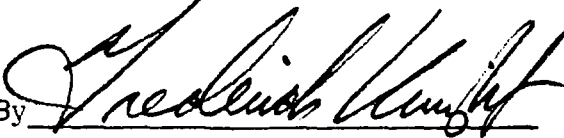
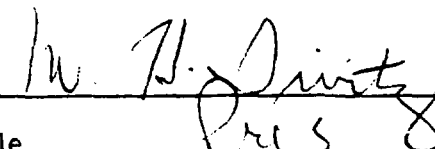
Basic Rent: \$3,009,121.20, payable in
installments of \$16,717.34
on each Basic Rental Payment
Date.

Lessee confirms that it has caused to be affixed to each Unit described
in Attachment 1 hereto the identification tag indicating Lessor's ownership of such Unit
as required by the Agreement.

WITNESS the due execution hereof as of the day and year first above written.

LESSEE:
BORG-WARNER CHEMICALS
DIVISION, BORG-WARNER
CORPORATION

LESSOR:
NATIONAL FLEET LEASING CORPORATION

By  By 
Title VICE PRESIDENT Title Pres.

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, That North American Car Corporation, a Delaware corporation, with its principal place of business at 222 South Riverside Plaza, Chicago, Illinois (hereinafter called "Seller"), for and in consideration of the sum of \$ _____ in full payment for the equipment hereinafter specified, the receipt whereof is hereby acknowledged, has granted, bargained, sold and by these presents does grant, bargain, sell, convey and deliver to _____ (hereinafter called "Purchaser"), its successors and assigns, the following described equipment, to wit:

58 5600-5800 cubic feet, 100 ton pneumatic unloading hopper cars bearing identifying road numbers NAHX 58011 to 58018 inclusive, NAHX 58020 to 58056 inclusive, NAHX 56500 to 56504 inclusive, and NAHX 58089 to 58094 inclusive.

TO HAVE AND TO HOLD the said equipment unto the said Purchaser, its successors and assigns, to and for its own use, forever.

It is understood and agreed that the sale of said cars is on an "AS IS" and "WHERE IS" basis, and North American neither assumes nor authorizes any person to assume for it any liability of any kind whatsoever in connection with such sale. It is further understood and agreed that North American shall not be liable for any indirect or consequential damages of any kind whatsoever.

Seller warrants to Purchaser, its successors and assigns, that at the time of delivery of said equipment Seller had legal title to said equipment and good and lawful right to grant, bargain, sell, convey and deliver as aforesaid and that title to said equipment was, as of the date of delivery of said equipment to Purchaser, free of all claims, liens and encumbrances whatsoever. SELLER MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND THE FOREGOING WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED.

IN WITNESS WHEREOF, Seller has caused its corporate seal to be hereto affixed and has caused these presents to be executed in its behalf by a duly authorized officer and attested by its Assistant Secretary, as of the 1st day of December, 1978.

NORTH AMERICAN CAR CORPORATION

ATTEST:

Assistant Secretary

By

Vice President

LEASE SCHEDULE
to
AGREEMENT AND LEASE
dated as of December 1, 1978
NATIONAL FLEET LEASING CORPORATION, Lessor
and
BORG-WARNER CHEMICALS DIVISION,
BORG-WARNER CORPORATION, Lessee

1. Description of Equipment: Fifty-eight covered railroad hopper cars bearing identifying road numbers NAHX 58011 through 58018, inclusive, NAHX 58020 through 58056, inclusive, NAHX 56500 through 56504, inclusive and NAHX 58089 through 58096, inclusive..
2. Location of Equipment: Continental United States
3. Final Delivery Date: December 1, 1978
4. Term:
Base Term. A period of 180 months beginning on the date as of which the parties execute and deliver the Certificate of Acceptance and ending on the same day of the 180th month thereafter.
5. Lessor's Cost: Not to exceed \$26,812 per Unit or \$1,555,096 in the aggregate.
6. Rent:
Basic Rent. On the first Basic Rental Payment Date and on each of the 179 succeeding Basic Rental Payment Dates Lessee shall pay to Lessor Basic Rent equal to \$16,717.34 per month. Each installment of Basic Rent shall be for the month immediately following the Basic Rental Payment Date on which such installment is due and payable.
7. Rental Payment Dates:
Basic Rental Payment Dates: The first day of the Term and the same calendar day of each succeeding month during the Term.
8. Insurance: The insurance required to be carried by Lessee pursuant to Section 10.1 of the Agreement may be subject to a deductible of not more than \$ 25,000.00 per occurrence. The insurance required to be carried by Lessee pursuant to Section 10.2 of the Agreement shall be in an amount of not less than \$ 1,000,000 per person injured or killed and \$ 4,500,000 per occurrence and may be subject to a deductible of not more than \$ ZERO.
9. Basis for Computation of Depreciation Deductions: Straight line, 100% of Lessor's cost over Term.

10. Stipulated Loss Values: The amounts payable as Stipulated Loss Value shall be determined for the several periods comprising the Term by reference to the table set forth in Annex 1 hereto.

APPROVED AND AGREED TO this 26th day of February,
1979 as the Lease Schedule to and forming a part of the above-mentioned Lease and Agreement.

NATIONAL FLEET LEASING CORPORATION
Lessor

By W. D. Givty
Title Pres.

BORG-WARNER CHEMICALS DIVISION,
BORG-WARNER CORPORATION
Lessee

By Frederick K. Smith
Title VICE PRESIDENT

BORG-WARNER CORPORATION

By George E. Rumpach
Title Executive Vice President

NATIONAL FLEET LEASING CORPORATION
5301 FIFTH AVENUE, PITTSBURGH, PA. 15232

DATE 12/01/78

MONTHLY STIPULATED LOSS VALUE
PERCENT OF CAPITALIZED BASE COST

LESSEE- BORG-WARNER CHEMICALS	UNIT NUMBER- E91206	MONTHLY RENTAL- 288.23
ACC'TS PAYABLE SECTION	TERM-180 MONTHS	TOTAL LEASE CONTRACT- 51,881.40
P. O. BOX 1868	DATE IN SERVICE- 12/01/78	CAPITALIZED BASE COST- 26,812.00
PKRSBRG, W VA 26101	RESIDUAL- 804.36	LEASING CHARGES- 25,069.40

MO/YR	PERCENT	MO/YR	PERCENT	MO/YR	PERCENT	MO/YR	PERCENT
12-78	106.24	12-79	105.07	12-80	103.07	12-81	100.25
01-79	106.17	01-80	104.94	01-81	102.87	01-82	99.98
02-79	106.10	02-80	104.80	02-81	102.66	02-82	99.70
03-79	106.03	03-80	104.64	03-81	102.45	03-82	99.42
04-79	105.94	04-80	104.50	04-81	102.22	04-82	99.13
05-79	105.85	05-80	104.34	05-81	101.99	05-82	98.84
06-79	105.75	06-80	104.18	06-81	101.77	06-82	98.53
07-79	105.66	07-80	104.01	07-81	101.53	07-82	98.22
08-79	105.55	08-80	103.83	08-81	101.28	08-82	97.91
09-79	105.44	09-80	103.65	09-81	101.04	09-82	97.59
10-79	105.32	10-80	103.46	10-81	100.78	10-82	97.27
11-79	105.20	11-80	103.27	11-81	100.52	11-82	96.94

MO/YR	PERCENT	MO/YR	PERCENT	MO/YR	PERCENT	MO/YR	PERCENT
12-82	96.60	12-83	92.12	12-84	86.82	12-85	80.70
01-83	96.26	01-84	91.72	01-85	86.34	01-86	80.15
02-83	95.91	02-84	91.30	02-85	85.86	02-86	79.59
03-83	95.56	03-84	90.88	03-85	85.38	03-86	79.04
04-83	95.20	04-84	90.46	04-85	84.88	04-86	78.47
05-83	94.84	05-84	90.02	05-85	84.37	05-86	77.90
06-83	94.47	06-84	89.58	06-85	83.86	06-86	77.33
07-83	94.09	07-84	89.14	07-85	83.35	07-86	76.74
08-83	93.71	08-84	88.69	08-85	82.84	08-86	76.15
09-83	93.32	09-84	88.23	09-85	82.31	09-86	75.56
10-83	92.93	10-84	87.76	10-85	81.77	10-86	74.96
11-83	92.53	11-84	87.30	11-85	81.24	11-86	74.36

MO/YR	PERCENT	MO/YR	PERCENT	MO/YR	PERCENT	MO/YR	PERCENT
12-86	73.74	12-87	65.96	12-88	57.35	12-89	47.92
01-87	73.13	01-88	65.28	01-89	56.60	01-90	47.09
02-87	72.51	02-88	64.58	02-89	55.84	02-90	46.27
03-87	71.88	03-88	63.89	03-89	55.07	03-90	45.43
04-87	71.24	04-88	63.18	04-89	54.30	04-90	44.59
05-87	70.60	05-88	62.48	05-89	53.52	05-90	43.74
06-87	69.95	06-88	61.76	06-89	52.74	06-90	42.89
07-87	69.30	07-88	61.04	07-89	51.96	07-90	42.04
08-87	68.65	08-88	60.32	08-89	51.16	08-90	41.17
09-87	67.98	09-88	59.59	09-89	50.36	09-90	40.30
10-87	67.31	10-88	58.84	10-89	49.55	10-90	39.43
11-87	66.64	11-88	58.10	11-89	48.74	11-90	38.55

NATIONAL FLEET LEASING CORPORATION
5301 FIFTH AVENUE, PITTSBURGH, PA. 15232

DATE 12/01/78

MONTHLY STIPULATED LOSS VALUE

LESSEE- BORG-WARNER CHEMICALS	UNIT NUMBER- F91206	MONTHLY RENTAL- 288.23
ACC'TS PAYABLE SECTION	TERM-180 MONTHS	TOTAL LEASE CONTRACT- 51,881.40
P. O. BOX 1868	DATE IN SERVICE- 12/01/78	CAPITALIZED BASE COST- 26,812.00
PKRSBRG, W VA 26101	RESIDUAL- 804.36	LEASING CHARGES- 25,069.40

MO/YR	AMOUNT	MO/YR	AMOUNT	MO/YR	AMOUNT	MO/YR	AMOUNT
12-78	28,483.60	12-79	28,170.84	12-80	27,634.97	12-81	26,878.48
01-79	28,465.27	01-80	28,134.96	01-81	27,579.03	01-82	26,804.99
02-79	28,446.94	02-80	28,096.57	02-81	27,523.09	02-82	26,731.51
03-79	28,426.10	03-80	28,055.68	03-81	27,467.15	03-82	26,655.51
04-79	28,402.75	04-80	28,017.29	04-81	27,406.20	04-82	26,577.01
05-79	28,379.40	05-80	27,973.89	05-81	27,345.25	05-82	26,498.51
06-79	28,353.55	06-80	27,930.48	06-81	27,284.30	06-82	26,417.51
07-79	28,327.69	07-80	27,884.57	07-81	27,220.84	07-82	26,333.99
08-79	28,299.33	08-80	27,838.66	08-81	27,154.88	08-82	26,250.48
09-79	28,268.46	09-80	27,790.25	09-81	27,088.91	09-82	26,164.46
10-79	28,237.59	10-80	27,739.32	10-81	27,020.44	10-82	26,078.44
11-79	28,204.22	11-80	27,688.40	11-81	26,949.46	11-82	25,989.91

MO/YR	AMOUNT	MO/YR	AMOUNT	MO/YR	AMOUNT	MO/YR	AMOUNT
12-82	25,898.87	12-83	24,698.66	12-84	23,277.83	12-85	21,636.39
01-83	25,807.84	01-84	24,590.08	01-85	23,149.19	01-86	21,487.70
02-83	25,714.30	02-84	24,478.98	02-85	23,020.55	02-86	21,339.01
03-83	25,620.76	03-84	24,365.39	03-85	22,889.41	03-86	21,190.31
04-83	25,524.71	04-84	24,251.79	04-85	22,755.76	04-86	21,039.11
05-83	25,426.15	05-84	24,135.69	05-85	22,619.60	05-86	20,885.40
06-83	25,327.60	06-84	24,017.08	06-85	22,483.44	06-86	20,731.69
07-83	25,226.53	07-84	23,898.46	07-85	22,347.28	07-86	20,575.48
08-83	25,125.47	08-84	23,777.35	08-85	22,208.61	08-86	20,416.76
09-83	25,019.39	09-84	23,653.72	09-85	22,067.44	09-86	20,258.03
10-83	24,915.83	10-84	23,530.10	10-85	21,923.76	10-86	20,096.80
11-83	24,807.24	11-84	23,406.47	11-85	21,780.07	11-86	19,935.58

MO/YR	AMOUNT	MO/YR	AMOUNT	MO/YR	AMOUNT	MO/YR	AMOUNT
12-86	19,769.33	12-87	17,684.17	12-88	15,375.88	12-89	12,846.99
01-87	19,605.60	01-88	17,500.37	01-89	15,174.54	01-90	12,625.59
02-87	19,439.35	02-88	17,314.08	02-89	14,970.70	02-90	12,404.20
03-87	19,270.60	03-88	17,127.78	03-89	14,764.34	03-90	12,180.29
04-87	19,099.35	04-88	16,938.97	04-89	14,557.99	04-90	11,953.89
05-87	18,928.09	05-88	16,750.17	05-89	14,349.13	05-90	11,727.48
06-87	18,754.33	06-88	16,558.85	06-89	14,140.27	06-90	11,498.56
07-87	18,580.56	07-88	16,365.04	07-89	13,928.90	07-90	11,269.64
08-87	18,404.29	08-88	16,171.22	08-89	13,715.02	08-90	11,038.22
09-87	18,225.51	09-88	15,974.89	09-89	13,501.15	09-90	10,804.29
10-87	18,046.74	10-88	15,776.06	10-89	13,284.77	10-90	10,570.36
11-87	17,865.45	11-88	15,577.22	11-89	13,065.88	11-90	10,333.92

LEASE SUPPLEMENT
to
AGREEMENT AND LEASE
dated as of December 1, 1978
between
NATIONAL FLEET LEASING CORPORATION, Lessor
and
BORG-WARNER CHEMICALS DIVISION,
BORG-WARNER CORPORATION, Lessee

Option to Lease or Purchase

Purchase Option. If Lessee is not in default hereunder, Lessee shall have the right to purchase all, but not less than all, Units at the expiration of the Base Term at a price equal to \$804.36 per Unit. Lessee shall give Lessor written notice 120 days prior to the end of the Base Term of its election to exercise such option. Payment of the option price shall be made at the place of payment specified in Section 4.4 by wire transfer against delivery of a bill of sale transferring each Unit in the Group to Lessee.

CORPORATE FORM OF ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF ALLEGHENY

} ss:

On this 26th day of February, 1979, before me personally appeared M. H. Sivitz, to me personally known, who being by me duly sworn, says that he is the President of National Fleet Leasing Corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

M. H. Sivitz Pres
M. H. Sivitz, President

Mariella Baroni

Notary Public

My commission expires:

MARILDA BARONI, Notary Public
Pittsburgh, Allegheny County, Pa.
My Commission Expires
October 21, 1980

CORPORATE FORM OF ACKNOWLEDGMENT

STATE OF ILLINOIS)
)
COUNTY OF COOK) ss:

On this 19th day of March, 1979, before me personally appeared Jerry E. Dempsey, to me personally known, who being by me duly sworn, says that he is the Executive Vice President of Borg-Warner Corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Daniel V. Considine

Notary Public

My commission expires: August 18, 1982